IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 729 of 2000
in
SPECIAL CIVIL APPLICATION No 10749 of 2000

WITH
CIVIL APPLICATION No.10381 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL KANTIBHAI JETHABHAI DECEASED THRO HEIRS
Versus
PATEL MANILAL BHIKHABHAI

Appearance:
1. LETTERS PATENT APPEAL No. 729 of 2000
SHRI AM PAREKH for Appellant No.
SHRI SHITAL R PATEL for Respondent No. 1
SHRI NAGESH SOOD, ASSISTANT GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 04/09/2003

COMMON ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The original petitioners, Patel Kantibhai Jethabhai and three others have filed Special Civil Application No.10749 of 2000 before this Court under Article 226 of the Constitution of India and challenged the impugned order dated 27.7.2000 passed by the Mamlatdar, Idar, respondent no.2 herein in Mamlatdar Court Act Case No.30 of 1998 (Annexure 'D' to the main petition). It was dismissed by the learned Single Judge of this Court (Coram: M.S. Shah, J.) on 11.10.2000 on the ground that the decision of the Mamlatdar does not have any finality and the civil court can decide the controversy between the parties on merits of the case without being bound by the decision of the Mamlatdar. It was contended by learned counsel Shri Parekh for the petitioners before the learned Single Judge that they had already lost injunction application, exhibit 5 filed before the Civil Court in Civil Suit No.24 of 1998, against which Misc. Civil Appeal No.46 of 1999 was filed before the District Court, Himatnagar, which was pending. Therefore, the learned Single Judge thought it fit to issue directions to the District Court, Himatnagar to hear and decide the said Misc. Civil Appeal No.46 of 1999 as expeditiously as possible, preferably within two months from the date of receipt of the writ or certified copy of the order whichever was earlier while disposing of the petition. The learned Single Judge also made it clear that it would be open to the petitioners to pray for appropriate relief including appropriate interim relief before the District Court. This order dated 11.10.2000 passed by the learned Single Judge dismissing Special Civil Application No.10749 of 2000 is challenged in this appeal, which was straightway admitted by the Division Bench of this Court (Coram: J.M. Panchal & A.M. Kapadia, JJ.) on 15.11.2000 and on Civil Application the appellant-petitioners are enjoying interim relief of status quo.

2. Mr.Parekh, learned counsel for the appellant tried to submit on merits in this appeal that in this case on earlier occasion, this Court (Coram: Kundan Singh, J.) has passed an order dated 26th July 1999 in Special Civil Application No.407 of 1999 directing the Mamlatdar to first decide the preliminary issue as to whether the Mamlatdar's Court has jurisdiction or not.

Instead of that the Mamlatdar decided the entire matter on merits. Therefore, the impugned order passed by the Mamlatdar is bad. It is true that the learned Single Judge of this Court directed the Mamlatdar to decide the preliminary issue, but that does not mean that the Mamlatdar was precluded from deciding the matter finally. It is on the contrary good that the learned Mamlatdar decided the entire matter on merits. We find from the impugned order passed by the Mamlatdar that before the Mamlatdar the appellant-petitioners have conceded that the matter be decided on merits. Therefore, on merits also we find no substance in the Appeal.

3. Learned counsel Shri Sheetal Patel appearing for respondent no.1 submitted that the appellant-petitioners had filed the writ petition, i.e. Special Civil Application No.10749 of 2000 before this Court on 9.10.2000. In para 11 of the petition it is stated that the petitioners have no other alternative, adequate and efficacious remedy available except by way of writ petition though the impugned order dated 27.7.2000 passed by the Mamlatdar, Idar was appealable and the appeal against the said order was maintainable before the Deputy Collector. In fact after dismissal of the writ petition, Special Civil Application No.10749 of 2000 by the learned Single Judge of this Court on 11.10.2000, the appellant-petitioners filed Appeal/ Revision No.5 of 2000 before the Court of Deputy Collector, Idar wherein notice was issued on 23.11.2000 and hearing of the same was fixed on 14.12.2000. He has produced a copy of the memo of appeal as well as order of notice issued by the Deputy Collector in the said appeal.

4. In view of the above Shri Sheetal Patel for respondent no.1 submitted that the main writ petition was also required to be dismissed on the ground of alternative remedy available to the petitioners and also on the ground of making false statement in the petition that the petitioners have no other alternative, efficacious remedy available to them against the order passed by the Mamlatdar.

4.1 Shri Sheetal Patel for respondent no.1 further submitted that having challenged the impugned order passed by the Mamlatdar in Appeal/ Revision No.5 of 2000 before the Deputy Collector, the appellant-petitioners were not entitled to challenge the judgement and order dated 11.10.2000 passed by the learned Single Judge of this Court dismissing Special Civil Application No.10749 of 2000. In fact this Appeal should be dismissed on the ground that though the appellant-petitioners have

challenged the impugned order passed by the Mamlatdar in Appeal before the Deputy Collector after dismissal of the writ petition, they have not disclosed this fact in Appeal and got it admitted by the Division Bench of this Court and enjoyed interim relief for nearly three years. Shri Sheetal Patel further submitted that learned counsel Shri Parekh who appeared before the learned Single Judge gave a wrong number of Misc. Civil Appeal No.46 of 1999, which was filed by the petitioners before the District Court, Himatnagar, against the order passed by the Civil Court below Exhibit 5, injunction application in Civil Suit No.24 of 1998. Because of that the Civil Court was not able to dispose of the Appeal within a period of two months from the date of receipt of the order as ordered by the learned Single Judge of this Court on 11.10.2000 while dismissing the writ petition, i.e. Special Civil Application No.10749 of 2000. Shri Sheetal Patel further submitted that ultimately the District Court, Himatnagar dismissed the appeal bearing correct number, i.e. Misc. Civil Appeal No.49 of 1999 by order dated 19.10.2002. The impugned order passed by the Civil Court dismissing the injunction application, Exhibit 5 in Civil Suit No.24 of 1998 and the order passed by the District Court dismissing Misc. Civil Appeal No.49 of 1999 have been challenged by the appellant-petitioners by way of separate petition, i.e. Special Civil Application No.11802 of 2000 before this Court which is pending decision.

5. In view of the submissions of Shri Sheetal Patel for respondent no.1, learned counsel Shri Parekh for the appellants sought permission to withdraw this appeal. If the appellant-petitioners had come with clean hands, then permission would have been granted, but considering the fact of suppressing the material facts before the learned Single Judge of this Court in writ petition as well as in this Appeal, we are of the considered opinion that this appeal is required to be dismissed with a heavy cost because there is a growing tendency among the litigating public to obtain interim relief in their favour by making false statement or suppressing material facts in their petition and enjoying interim relief for a considerably long time.

6. Accordingly, this Letters Patent Appeal is dismissed with a special cost of Rs.10,000/- (Rupees ten thousand only). The appellant-petitioners jointly and severally shall pay Rs.5000/-, (Rupees five thousand only) to respondent no.1 and Rs.5000/- (Rupees five thousand only) to respondent no.2, by way of costs.

7. Civil Application No.10381 of 2000 is dismissed as the main appeal is dismissed. Interim relief granted earlier therein stands vacated forthwith. Rule is discharged.

(B.J. SHETHNA, J.)

(RAVI R. TRIPATHI, J.)

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